Postal Regulatory Commission Submitted 12/28/2022 12:36:56 PM Filing ID: 124046 Accepted 12/28/2022

BEFORE THE POSTAL REGULATORY COMMISSION WASHINGTON, D.C. 20268–0001

COMPETITIVE PRODUCT PRICES
PRIORITY MAIL, FIRST-CLASS PACKAGE SERVICE &
PARCEL SELECT
PRIORITY MAIL, FIRST-CLASS PACKAGE SERVICE &
PARCEL SELECT CONTRACT 5

Docket No. MC2023-105

COMPETITIVE PRODUCT PRICES
PRIORITY MAIL, FIRST-CLASS PACKAGE SERVICE &
PARCEL SELECT CONTRACT 5 (MC2023–105)
NEGOTIATED SERVICE AGREEMENT

Docket No. CP2023–106

USPS REQUEST TO ADD PRIORITY MAIL, FIRST-CLASS PACKAGE SERVICE & PARCEL SELECT CONTRACT 5 TO COMPETITIVE PRODUCT LIST AND NOTICE OF FILING MATERIALS UNDER SEAL

(December 28, 2022)

In accordance with 39 U.S.C. § 3642, 39 C.F.R. § 3020.30 et seq., and 39 C.F.R. § 3015.5, the United States Postal Service requests that Priority Mail, First-Class Package Service & Parcel Select Contract 5 be added to the competitive product list within the Mail Classification Schedule. This is a competitive product not of general applicability within the meaning of 39 U.S.C. § 3632(b)(3).

Attachment A is a redacted version of the Governors' Decision, which includes the explanation and justification required by the Commission's rules. Attachment B is a redacted version of the contract. Attachment C shows the requested changes in the Mail Classification Schedule product list, with the additions underlined. Attachment D provides a statement of supporting justification, as required by 39 C.F.R. § 3020.32. Attachment E is a certification of compliance with 39 U.S.C. § 3633(a)(1) and (3). Unredacted versions of the Governors' Decision, contract, and required cost and

revenue data are being filed under seal. Attachment F provides an Application for Nonpublic Treatment of these materials.

As required by 39 U.S.C. § 3642(d)(1), this Request is being published in the Federal Register.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

By its attorney:

Sean C. Robinson

475 L'Enfant Plaza, SW Washington, D.C. 20260-1137 (202) 268-8405 Sean.C.Robinson@usps.gov December 28, 2022

ATTACHMENT A TO REQUEST REDACTED GOVERNORS' DECISION

DECISION OF THE GOVERNORS OF THE UNITED STATES POSTAL SERVICE ON THE ESTABLISHMENT OF PRICES AND CLASSIFICATIONS FOR DOMESTIC COMPETITIVE AGREEMENTS, OUTBOUND INTERNATIONAL COMPETITIVE AGREEMENTS, INBOUND INTERNATIONAL COMPETITIVE AGREEMENTS, AND OTHER NON-PUBLISHED COMPETITIVE RATES (GOVERNORS' DECISION NO. 19-1)

February 7, 2019

STATEMENT OF EXPLANATION AND JUSTIFICATION

Pursuant to our authority under section 3632 of title 39, as amended by the Postal Accountability and Enhancement Act of 2006 ("PAEA"), we establish new prices not of general applicability for certain of the Postal Service's competitive service offerings, and such changes in classification as are necessary to implement the new prices.

This decision establishes new prices for Domestic Competitive Agreements, Outbound International Competitive Agreements, Inbound International Competitive Agreements, and Other Non-Published Competitive Rates. Domestic Competitive Agreements consist of negotiated service agreements with Postal Service customers for domestic services that are categorized as competitive in accordance with 39 U.S.C. § 3642(b)(1)-(2). Outbound International Competitive Agreements consist of negotiated service agreements with Postal Service customers for outbound international services that are categorized as competitive in accordance with 39 U.S.C. § 3642(b)(1)-(2). Inbound International Competitive Agreements consist of negotiated service agreements with foreign postal operators or other entities for inbound international services that are categorized as competitive in accordance with 39 U.S.C. § 3642(b)(1)-(2). Other Non-Published Competitive Rates consist of rates not of general applicability that are not embodied in contractual instruments.

With respect to any product within the above categories, management is hereby authorized to prepare any necessary product description, including text for inclusion in the Mail Classification Schedule, and to make all necessary regulatory filings with the Postal

| Regulatory Commission. | | |
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The Postal Accountability and Enhancement Act (PAEA) requires that prices for competitive products must cover each product's attributable costs, not result in subsidization by market dominant products, and enable all competitive products to contribute an appropriate share to the Postal Service's institutional costs. For agreements subject to this Decision, there are hereby established prices that will enable each agreement to cover at least 100 percent of the attributable costs for the relevant product and that conform in all other respects to 39 U.S.C. §§ 3632-3633 and 39 C.F.R. §§ 3015.5 and 3015.7. As discussed in the accompanying management analysis, the Chief Financial Officer (or his delegee(s)) shall certify that all cost inputs have been correctly identified for prices subject to this Decision and that all prices subject to this Decision conform to this Decision and to the requirements of the PAEA.

No agreement, grouping of functionally equivalent agreements, or other classification authorized pursuant to this Decision may go into effect unless it is submitted to the Postal Regulatory Commission with a notice that complies with 39 U.S.C. § 3632(b)(3). On a semi-annual basis, management shall furnish the Governors with a report on all non-published rate and classification initiatives, as specified in the accompanying Management Analysis. Not less than once each year, the Governors shall review the basis for this Decision and make such further determination as they may deem necessary. This Decision does not affect postal management's obligation to furnish to the Board of Governors information regarding any significant new program, policy, major modification, or initiative, or any other matter under 39 C.F.R. § 3.7(d), including where such a matter also falls within the scope of this Decision.

This Decision supersedes previous Governors' Decisions setting classifications and rates not of general applicability for competitive products; however, prices and classifications established under those Decisions may continue to be offered until the expiration of their terms, and contractual option periods and extension provisions that are included in the existing and future agreements can continue to be exercised.

ORDER

In accordance with the foregoing Decision of the Governors, the new prices and terms set forth herein for Domestic Competitive Agreements, Outbound International Competitive Agreements, Inbound International Competitive Agreements, and Other Non-Published Competitive Rates and the changes in classification necessary to implement those prices, are hereby approved and ordered into effect. An agreement or other nonpublished rate and classification initiative is authorized under this Decision only if the prices fall within this Decision and the certification process specified herein is followed. Prices and classification changes established pursuant to this Decision will take effect after filing with and completion of any necessary review by the Postal Regulatory Commission.

By The Governors:

Robert M. Duncan

Chairman, Board of Governors

Attachment A

Management Analysis of Domestic Competitive Agreements, Outbound International Competitive Agreements, Inbound International Competitive Agreements, and Other Non-Published Competitive Rates

This analysis concerns the inbound competitive prices and classifications in the Domestic Competitive Agreements, Outbound International Competitive Agreements, Inbound International Competitive Agreements, and Other Non-Published Competitive Rates (collectively, "competitive instruments"). Competitive instruments are often negotiated with customers and foreign postal operators for better cost coverage, higher overall contribution, and improved service with respect to postal services classified as competitive. They may also arise from other sources, such as the Universal Postal Convention.

| The cost coverage for each competitive agreement or grouping of functionally equivalent nstruments (collectively, each "product") will be |
|---|
| The cost coverage for a product equals |
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Each competitive instrument may have multiple price categories and negotiated components. Examples of such categories or components would be Priority Mail, Priority Mail Express, Parcel Return Service, Parcel Select, First-Class Package Service, First Class Package International Service, Commercial ePacket Service, Priority Mail International, Priority Mail Express International, International Priority Airmail, International Surface Air Lift, Inbound Parcel Post, Inbound Direct Entry, and Inbound EMS services. These or other categories may include other services that the relevant customer or foreign postal operator offers to its customers under differing terms, but that nevertheless are processed and delivered in the same manner within the United States Postal Service's network. Such instruments may also establish negotiated rates for services ancillary to such items and for customized competitive services developed for application solely in the context of the agreement.

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established by these formulas should not interfere with competitive products' ability as a whole to comply with 39 U.S.C. §3633(a)(3), which, as implemented by 39 C.F.R.§ 3015.7(c), requires competitive products to contribute a minimum percentage to the Postal Service's total institutional costs. Accordingly, no issue of subsidization of competitive products by market dominant products should arise from 39 U.S.C. §3633(a)(1).

The Postal Service shall submit a semi-annual report to the Governors. The report shall include information on the cost coverage for each agreement or initiative that has been executed under the authority of Governors' Decision 19-1. Agreements classified as non-published rates or rate ranges may be reported as a collective grouping; all other agreements or initiatives are to be reported separately. The report shall also include cost coverage information on any agreements and nonpublished initiatives established under previous numbered Governors' Decisions and Resolutions.

UNITED STATES POSTAL SERVICE OFFICE OF THE BOARD OF GOVERNORS

CERTIFICATION OF GOVERNORS' VOTE ON GOVERNORS' DECISION NO. 19-1

Consistent with 39 USC 3632(a), I hereby certify that the following Governors voted in favor of Governors' Decision No. 19-1:

Robert M. Duncan David C. Williams

Michael J. Elston

Secretary of the Board of Governors (A)

Date

7 February 2019

ATTACHMENT B TO REQUEST REDACTED SHIPPING SERVICES CONTRACT

SHIPPING SERVICES CONTRACT

BETWEEN

THE UNITED STATES POSTAL SERVICE AND



This Shipping Services Contract ("SSC" or "Contract") is by and between corporation organized and existing under the laws of with its principal office at ("Customer") and the United States Postal Service, an independent establishment of the Executive Branch of the United States Government established by the Postal Reorganization Act, Public Law 91-375, with its principal office at 475 L'Enfant Plaza SW, Washington, DC 20260 (the "Postal Service"). The Postal Service and Customer are referred to herein collectively as the "Parties" and each as a "Party."

RECITALS

- A. Customer is ;
- B. Postal Service is an independent establishment of the Executive Branch of the Government of the United States engaged principally in the processing, shipping, and delivering mail and packages to the American public;
- C. Customer has distinct needs concerning the delivery of its products, which Postal Service has represented it is prepared to meet; in particular, Customer is seeking to: (A) maximize on-time delivery; (B) reduce logistics costs and claims; and (C) improve services;
- D. Postal Service desires to provide services for Customer to meet such distinct needs and to assist Customer in reaching its delivery goals; and Customer desires to retain Postal Service to

- provide shipping and delivery services from time to time throughout the Term of this Contract; and
- E. It is the intention of the Parties to enter into a Contract that will benefit the Postal Service, the postal system as a whole, and Customer, and that will comply with the requirements of Title 39 United States Code, as amended by the Postal Accountability and Enhancement Act of 2006.

Now, therefore, in consideration of the mutual covenants and promises set forth herein, the Parties agree as follows:

TERMS AND CONDITIONS

1 Definitions

Terms which are capitalized in this Contract shall be defined as follows.

1.1 "Actual Delivery Date" means the date on which Postal Service actually delivers a Package to the Consignee.

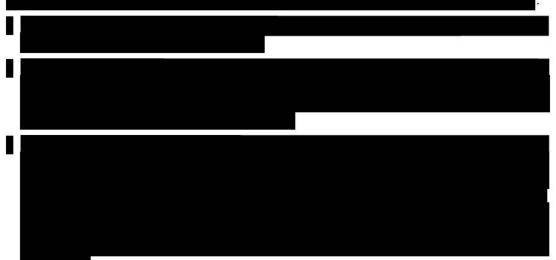


- 1.3 "Business Days" means Calendar Days, excluding weekends and U.S. national holidays, observed by the Postal Service.
- 1.4 "Calendar Days" means all days in the year.
- 1.5 "Consignee" means the person designated by the Shipper to receive possession of a Package at the Point of Destination.
- 1.6 "Custody of Postal Service" means the period commencing at the Point of Origin when Postal Service, its employees, or Subcontractors take(s) the first step toward taking constructive or actual physical possession of a Package and ending at the Point of Destination when Postal Service or Subcontractors take(s) the final step to release a Package to the constructive or actual physical possession of Consignee or other third party designated by the Consignee.
- 1.7 **"Contract"** means these terms and conditions together with all schedules, exhibits, and any other document incorporated herein by reference.
- 1.8 **"EDI"** means ANSI's ASC X12 Standards and any other applicable published industry guidelines for transaction sets as the Parties may agree from time to time.
- 1.9 "Force Majeure Event" means (a) severe natural disaster or act of God (tornado, hurricane, flood, earthquake or tsunami); (b) war, act of terrorism or riot; (c) government action; or (d) other similarly catastrophic and unforeseeable event or condition.
- 1.10 "Invoice Value" means (a) the price set forth in the purchase receipt (where the term "purchase receipt" refers to a purchase order or other sales receipt under which Customer is the seller) or (b) the price set forth on the Customer intra-store transfer document, as applicable.

- 1.11 **"Customer"** means , or, depending upon the context, that has requested Services under this Contract.
- 1.12 "Customer Data" means all records, files, reports, forms, and other data received, computed, developed, used or stored in connection with Services rendered under this Contract, and all updates and additions thereto, regardless of the format or media (including EDI data), including but not limited to names of Shippers and Consignees, and other customers, proof of delivery reports, and on-line shipment tracing screens. Customer Data does not include physical address data that USPS owns or obtains from sources other than Customer.
- 1.13 "Customer Facility" means a building or physical plant, including a warehouse or office building, owned or operated by or on behalf of Customer.



1.15 "Customer Products" or "Product" means any and all contents of a Package that Postal Service takes into its Custody under this Contract, including but not limited to



- 1.16 "Package" means a separate unit that contains Products for shipment and delivery, as noted on the Receipt (each Receipt indicating the number of Packages).
- 1.17 "Point of Origin" means the place at which the Shipper transfers possession of a Package to Postal Service or to the Custody of Postal Service or its Subcontractors.
- 1.18 **"Point of Destination"** means the place at which Postal Service transfers a Package from the Custody of Postal Service to the possession of the Consignee.
- 1.19 "Postal Service" means the United States Postal Service and its Subcontractors and any person carrying out Postal Service's duties hereunder, including, but not limited to, Postal Service's employees.
- 1.20 "Postal Service System" means Postal Service's web-based track and trace system, as may be upgraded from time to time, including all equipment, telecommunications & network equipment, application software and tools.

- 1.21 "Rates" means the unit prices that apply to Services as set forth in this Contract.
- 1.22 "Receipt" means manifest information, including an Acceptance Scan by the Postal Service or such other form as the Parties may use from time to time to evidence custody of the Packages. "Regulatory Requirements" means applicable international, federal, state, and local laws (including the local laws of any nation or state where Services are being provided), regulations, conventions, treaties, administrative rules, ordinances, or other legal authority, including but without limitation, applicable provisions of the Domestic Mail Manual (as may posted regularly undated bv the Postal Service and http://pe.usps.com/text/dmm300/dmm300 landing.htm) and of other postal laws and standards, including USPS Publication 52 – Hazardous, Restricted, and Perishable Mail.
- 1.23 "Scheduled Delivery Date" means the date Postal Service has committed to provide delivery of a Package to the Consignee, based upon the standard delivery times as published in Postal Service's-current service guide.
- 1.24 "Service Request" means an oral or written communication to Postal Service in which Customer or a third-party shipping Products on Customer's behalf, notifies Postal Service that a Package is ready for pick-up, as may be further described in the Operations MOU.
- 1.25 "Services" means any and all services performed by Postal Service, or which Postal Service has agreed to perform, hereunder, including without limitation carriage of Packages in intrastate and interstate and North American commerce from, to, or in between all points and places in the continental United States, Alaska, Hawaii, Puerto Rico, Canada and Mexico, including delivery of Packages and incidental services such as logistics planning and coordination; data processing and transmission.
- 1.26 "Shipper" means the person or entity at the Point of Origin who is tendering a Package for processing, shipment and delivery by Postal Service. For purposes of this Contract, Shipper may be Customer or
- 1.27 "Subcontractor" means any person or entity acting under written contract, or as an Affiliate of Postal Service, to perform Services on Postal Service's behalf or to fulfill Postal Service's obligations under this Contract.
- 1.28 "Term" means the Term of this Contract as defined in <u>Section 3</u> (Term, Expiration and Termination).

2 Scope

- 2.1 Postal Service's Authority. Postal Service represents and warrants that an independent establishment of the Executive Branch of the Government of the United States with the authority to process, ship and deliver Packages to Consignees in accordance with title 39.
- 2.2 Applicability. This Contract governs all Services performed by Postal Service during the Term and as further set forth in <u>Section 3.1.3</u>. In particular, all processing, shipping and delivery of Packages during the Term shall be covered by this Contract, and the resulting Services shall be subject to the terms and conditions of this Contract (including the agreed Rates). Incidental Services are covered by this Contract if such services are incidental to Services that are covered by this Contract.



3 Term. Expiration and Termination

- 3.1 **Term.** This Contract is subject to approval by Postal Service senior management and/or the Governors of the Postal Service, as well as by the Postal Regulatory Commission ("the Commission"). In accordance with Title 39 and the Commission's Rules of Practice and Procedure, and upon approval of the Postal Service Governors, the Postal Service will make required filings with the Commission. The Effective Date of this Contract shall be three (3) business days following the day on which the Commission issues all necessary regulatory approval. For the purposes of this SSC, business days are defined as Monday through Friday, excluding federal holidays and days on which the Postal Service Headquarters is administratively closed.
 - 3.1.1 Unless the Effective Date of this Contract occurs between December 1st and March 31st, this Contract shall expire three (3) years from the Effective Date, unless (1) terminated by either Party with one hundred and eighty (180) Calendar Days' notice to the other Party in writing;(2) renewed by mutual agreement in writing and subsequent approval by the Commission; (3) superseded by a subsequent contract between the Parties; (4) ordered by the Commission or a court; or (5) required to comply with subsequently enacted legislation.
 - 3.1.2 If the Effective Date of this Contract occurs between December 1st and March 31st, the Contract will expire on March 31st following the third anniversary of the Contract's Effective Date, unless (1) terminated by either Party with one hundred and eighty (180) Calendar Days' notice to the other Party in writing;(2) renewed by mutual agreement in writing and subsequent approval by the Commission; (3) superseded by a subsequent contract between the Parties; (4) ordered by the Commission or a court; or (5) required to comply with subsequently enacted legislation.
 - 3.1.3 If, at the conclusion of this Contract term, both Parties agree that preparation of a successor SSC is active, the SSC will be extended for up to two (2) ninety (90) Calendar Day periods with official notification to the Commission at least seven (7) calendar days prior to Contract's expiration date. Upon both Parties agreement of the extension, the adjustment clause in Section6.12 (Annual Adjustment) will be implemented throughout the extension period.
- 3.2 **Termination for Cause by Customer.** Customer may terminate this Contract, upon written notice effective immediately, if:
 - (A) Postal Service (as defined to include Subcontractors) fails to comply with any applicable Regulatory Requirements in connection with Services provided hereunder; or
 - (B) Postal Service fails to comply with the expectations set forth in the Operations MOU; or
 - (C) Postal Service becomes insolvent, is unable to pay its debts when due, files for bankruptcy or reorganization, is the subject of involuntary bankruptcy, has a receiver appointed, or assigns all or substantially all of its assets to an unaffiliated third party; or
 - (D) Postal Service makes an unauthorized assignment, as described in <u>Section 21</u> (Assignment); or
 - (E) Postal Service is otherwise in material breach of this Contract, which breach is incapable of cure or, where capable of cure, remains uncured thirty (30) Calendar Days after

- written notice from Customer of such breach; or
- (F) Postal Service becomes legally or functionally unable to perform its duties hereunder.
- 3.3 **Termination for Cause by Postal Service.** Postal Service may terminate this Contract, upon written notice effective immediately, if:
 - (A) Customer has become insolvent, is unable to pay its debts when due, files for bankruptcy or reorganization, is the subject of involuntary bankruptcy, has a receiver appointed, or assigns all or substantially all of its assets to an unaffiliated third party.
 - (B) Customer makes an unauthorized assignment, as described in <u>Section 21</u> (Assignment) herein; or
 - (C) Customer is otherwise in material breach of this Contract, which breach is incapable of cure or, where capable of cure, remains uncured thirty (30) Calendar Days after written notice from Postal Service of such breach
- 3.4 **Termination without Cause.** Customer may terminate this Contract at any time for any reason by providing one hundred and eighty (180) Calendar Days written notice to Postal Service; Postal Service may terminate this Contract at any time for any reason by providing one hundred and eighty (180) Calendar Days written notice to Customer.
- 3.5 **Remedies Non-Exclusive**. The right to terminate under this <u>Section 3</u> shall be in addition to any other rights available to the non-breaching Party under law or in equity.
- 3.6 **Survival.** The rights and obligations of the Parties under <u>Sections 5</u> (Receipts), <u>6.12</u> (Appeals), <u>7</u> (Payment), <u>8</u> (Delivery), <u>9</u> (Product Loss or Damage; Injury to Persons and Property), <u>10</u> (Valuation), <u>12</u> (Submission of Claims), <u>13</u> (Compliance with Law/Authority), <u>14</u> (Ownership of Products), <u>16</u> (Confidentiality), <u>17</u> (Data), <u>19</u> (Indemnification), <u>22</u> (Legal Actions), <u>23</u> (Miscellaneous) and any other provision of this Contract to the extent that provision creates an indemnity obligation, or provides for rights or remedies after termination, shall survive the termination of this Contract.

4 Service Levels

- 4.1 **Acceptance of Tender.** During the Term, Postal Service agrees to accept all Packages tendered by Customer that are covered under this Contract and not otherwise prohibited from shipment hereunder and to ship and deliver each Package to the Consignee according to the Shipper's instructions.
- 4.2 **Services.** Postal Service shall make every effort to perform all Services effectively and efficiently and in accordance with the requirements set forth in this Contract.
- 4.3 **Equipment in Good Condition**. The equipment used by Postal Service to perform Services under this Contract shall be in good operating condition and free from any condition which may cause damage to the Packages or injury to any person. Postal Service shall ensure that the Packages are held/stored at all times in secured premises.
- 4.4 **Special Logistics Services**. Upon Customer's request at any time during the Term, and at no additional charge to Customer, Postal Service will perform the following services: (a) coordination between Customer, Customer's suppliers, and other third parties, (b) logistics planning, (c) project follow-up including "track and trace," exception management and claims assistance, (d) mutually agreed upon site visits, and (f) any other transportation logistics services as may be reasonably requested by Customer and agreed by the Postal Service.
- 4.5 Quarterly Business Reviews. The Parties shall, within thirty (30) Calendar Days after the

conclusion of each full Contract Quarter in each Contract Year, jointly conduct a business review of Customer's Contract Packages, pricing tiers, the agreed-upon locations referred to in this Contract, and other performance expectations under this Contract either in person, by telecom, or by webinar. If either Party is unable to conduct a business review within thirty (30) Calendar Days after the conclusion of the above referenced Contract Quarters, it shall notify the other Party in writing (i.e., email or mail) of that fact and propose a date as soon as practicable thereafter.

4.6 Personnel. Postal Service shall only use trained personnel performing Services provided under this Contract, including Postal Service employees and Postal Service approved Subcontractors, and all Services so provided shall be performed in a professional and workmanlike manner and in accordance with this Contract, generally accepted industry practice and any applicable Regulatory Requirements.

5 Receipts

Each Package transported pursuant to this Contract shall be evidenced by a Receipt showing the Point of Origin, the Point of Destination, and the Scheduled Delivery Date. The Parties expressly waive any rights and remedies pursuant to Regulatory Requirements that they may have under the terms and conditions of the Receipt which are in conflict with this Contract. The absence or loss of any such Receipt shall not relieve Postal Service of its obligations and responsibilities hereunder with respect to such Package. Except as otherwise provided in this Contract, the Receipt shall be evidence that Postal Service received the Package in good order and condition, unless otherwise noted on the face of the Receipt.

6 Rates and Volume Commitments

- 6.1 Except to the extent different terms or prices are specified in this Contract, applicable provisions of the Domestic Mail Manual (as may be regularly updated by the Postal Service and posted at http://pe.usps.com/text/dmm300/dmm300 landing.htm) and of other postal laws and standards, including USPS Publication 52 Hazardous, Restricted, and Perishable Mail, apply to mail tendered under this Contract.
- 6.2 This Contract applies to Customer's inbound and outbound packages originating from or being returned to Customer's compliant with Section 6.4 ("Contract Packages"), excluding packages originating from and/or addressed to ZIP Codes contained in Table A below, as follows:
 - Priority Mail weight-based packages that do not exceed
 ;
 - 2. First-Class Package Service Commercial packages that do not exceed
 - 3. Outbound Parcel Select DSCF SCF machinable pieces, excluding and are not addressed to any ZIP Codes in Attachment A (" ");
 - 4. Outbound Parcel Select DSCF SCF machinable pieces, excluding and are addressed to any ZIP Codes in Attachment A (" ");
 - 5. Outbound Parcel Select DSCF DNDC machinable pieces that are no greater than and are not addressed to any ZIP Codes in Attachment A ("
 ");

- 6. Outbound Parcel Select DSCF DNDC machinable pieces that are no greater than and are addressed to any ZIP Codes in Attachment A (" ");
- 7. Parcel Select Lightweight DSCF SCF pieces that do not exceed and are not addressed to any ZIP Codes in Attachment A (""):
- 8. Parcel Select Lightweight DSCF SCF pieces that do not exceed and are addressed to any ZIP Codes in Attachment A ("");
- Parcel Select Lightweight DNDC NDC pieces that do not exceed and are not addressed to any ZIP Codes in Attachment A (""); and
- 10. Parcel Select Lightweight DNDC NDC pieces that do not exceed and are addressed to any ZIP Codes in Attachment A ("").



- 6.3 Customer expressly commits to not offer, sell, or intentionally allow the use of Rates provided in this Contract to any other entity or party (i.e., "reselling") not covered by this Contract. Except as otherwise provided in this Contract, Customer shall not intentionally extend pricing to a third party under this Contract, including commercial published pricing for the Services defined in Section 6.2, or any prices below commercial published pricing. For the avoidance of doubt, a violation of this section will constitute a material breach of this Contract. This requirement may be waived in writing by the Postal Service, expressly for the limited purpose of Customer's dropshipping activities.
- 6.4 Customer will manifest Priority Mail and First-Class Package Service Packages as specified by the Postal Service, using a separate permit number and/or PC Postage account to ship such Packages, and will use the Electronic Verification System ("eVS"), other USPS approved manifest systems, or USPS approved PC Postage vendors for payment of such Packages.
- 6.5 Customer will manifest Parcel Select pound-rated and Parcel Select Lightweight Packages under a separate account as specified by the Postal Service, using the Electronic Verification System ("eVS"). Current specifications can be found in Publication 205: eVS Business and Technical Guide.
- 6.6 Customer shall pay, as full compensation for the Services provided by Postal Service, the Rates agreed to by the Parties in <u>Section 6.11</u> (Price Calculation). Rates are to be paid at the time of shipment via ACH, debit, PC Postage or EPS.
- 6.7 The Parties have mutually agreed to specific shipping locations from where Packages must originate, along with the associated Customer Registration ID, Mailer ID and Payment Method information required for each shipping location provided that dropshipping, as may

- be approved by the Postal Service, may originate from other locations. Rates for any newly approved permits and/or PC Postage accounts will be effective within fifteen (15) Business Days after the Postal Service receives written notification from Customer.
- 6.8 Only Contract Packages, plus Customer's other Priority Mail Packages, First-Class Package Service Contract Packages, Parcel Select pound-rated Packages and Parcel Select Lightweight Packages ("Total Packages"), shipped from authorized permits and/or PC Postage accounts shall count toward the volume commitments expressed in Sections 6.11 (Price Calculation) and 6.12 (Annual Adjustment), with Tables C and D, if any.
- 6.9 The Postal Service will not provide Customer with Priority Mail packaging.
- 6.10 The Rates contained herein will take effect on the Effective Date. Calendar and Contract Quarters are defined as:
 - 1. <u>Calendar Quarters</u>. "Calendar Quarter(s)" or "Quarter(s)", refer to the periods as follow in Table B.

Table B

| Calendar Quarters | | | | |
|-------------------|----------------|--|--|--|
| Start of Period | End of Period | | | |
| January 1st | March 31st | | | |
| April 1st | June 30th | | | |
| July 1st | September 30th | | | |
| October 1st | December 31st | | | |

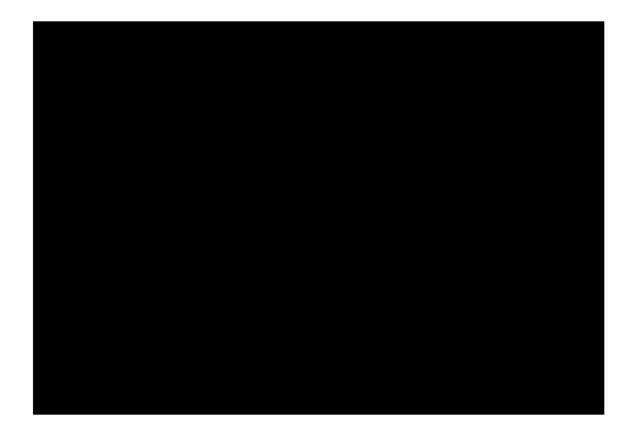
2. <u>Contract Quarters</u>. Contract Quarters will be the periods consisting of the Calendar Quarters shown in **Table B**, with Contract Quarter 1 being set as the Calendar Quarter in effect, as of the Effective Date of the Contract.

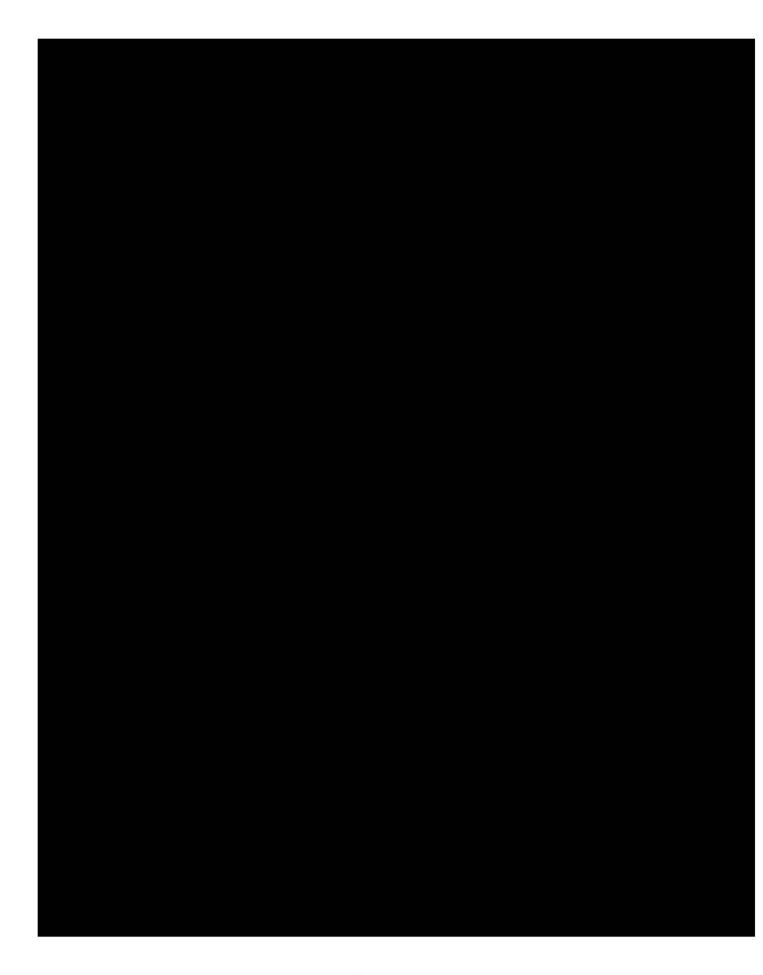
6.11 Price Calculation.

A. Tier threshold (Total Packages). As outlined in **Table C** below, the following quarterly average volumes must be met in order to achieve the applicable Contract Package Rates in **Tables 1** through **12** below.



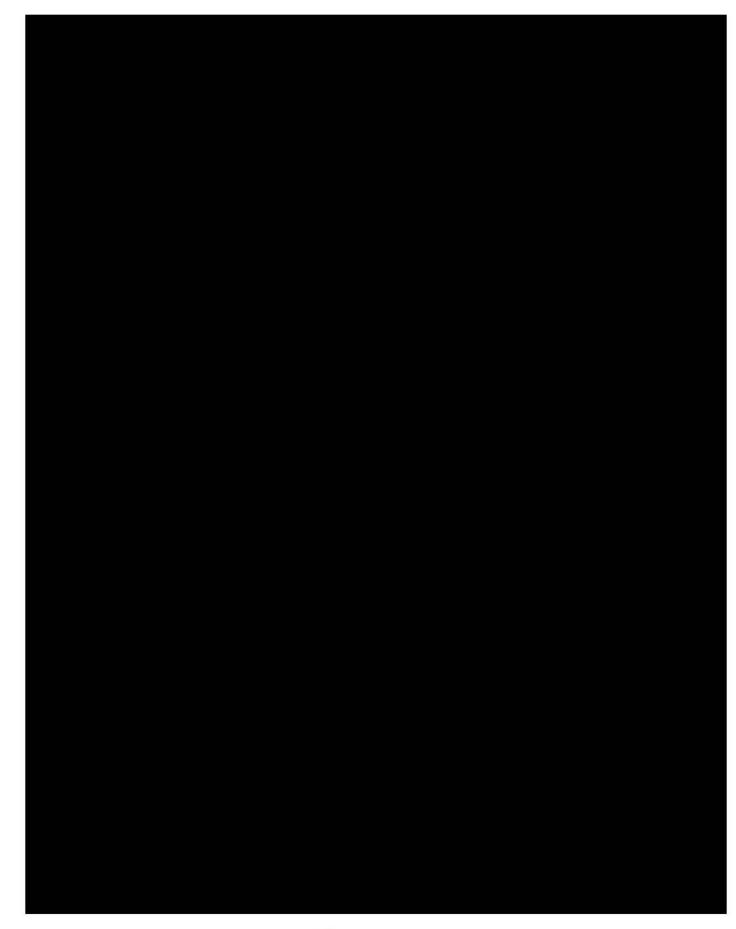
- B. From the Effective Date of the Contract through December 31, 2022, Customer will pay Tier 2 Rates for Contract Packages, pursuant to Tables 5 through 8 below. Should the Customer earn a higher tier than that received in any full Contract Quarter prior to January 1, 2023, the Customer will receive the higher tier within thirty (30) calendar days of the conclusion of that Contract Quarter. Beginning with the Contract Quarter effective January 1, 2023, tier Rates will be determined by the quarterly average of Total Packages shipped during the term of this Contract, to include Total Priority Mail packages shipped under Contract PMNPR2/Docket No. CP2020-170. If the quarterly average of Total Packages shipped falls below the minimum volume set for Tier 1 pricing, the Postal Service in its sole discretion has the right to revert Customer to the most current Priority Mail Commercial Plus, published First-Class Package Service Commercial, Parcel Select pound-rated and Parcel Select Lightweight published prices for the subsequent Contract Quarter.
- C. Customized Rates for this Contract will be based on a rolling four (4) quarter average., Rates for subsequent Contract Quarters will be calculated by the number of Total Packages shipped in the previous four (4) Contract Quarters divided by four (4), to include Total Priority Mail packages shipped under Contract PMNPR2/Docket No. CP2020-170. At the conclusion of each Contract Quarter, the Postal Service will calculate the total number of Total Packages and the number of applicable Contract Quarters to calculate and apply the appropriate Rate table within thirty (30) Calendar Days of the conclusion of that Contract Quarter. The Postal Service will notify Customer, within thirty (30) Calendar Days after the start of each full Contract Quarter, of the applicable tiered pricing for any Contract Packages shipped during that Contract Quarter. The calculated Rate for the new Contract Quarter will become effective within thirty (30) Calendar Days from the start of the new Contract Quarter.





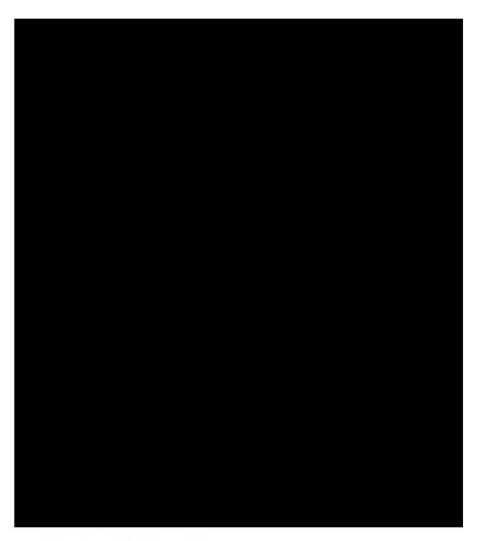












6.12 Annual Adjustment

A. For subsequent years of the Contract, beginning on the first anniversary of the Contract's Effective Date, customized Priority Mail prices under this Contract, found in **Tables 1**, **5** and **9**, will be the lesser of: (a) previous year's prices plus the cumulative, overall percentage change in prices of general applicability for Priority Mail Commercial Plus, as calculated by the Postal Service, but excluding any time-limited price change(s); or (b) the previous year's prices plus the applicable rate cap percentage referenced in Table D below.



B. For subsequent years of the Contract, beginning on the first anniversary of the Contact's Effective Date, customized First-Class Package Service prices under this Contract, found in **Tables 2**, **6** and **10**, for Contract Packages weighing more than

be the lesser of: (a) previous year's prices plus the cumulative, overall percentage change in prices of general applicability for First-Class Package Service - Commercial, as calculated by the Postal Service, but excluding any time-limited price change(s); or (b) the previous year's prices plus the applicable rate cap percentage referenced in **Table E** below.

C. For subsequent years of the Contract, beginning on the first anniversary of the Contact's Effective Date, customized Parcel Select DSCF SCF and DNDC pound-rated and Parcel Select Lightweight prices under this Contract, found in Tables 3, 4, 7, 8, 11 and 12, will be the lesser of: (a) previous year's prices plus the cumulative, overall percentage change in prices of general applicability for Parcel Select DSCF SCF and DNDC pound-rated and Parcel Select Lightweight, respectfully, as calculated by the Postal Service, but excluding any time-limited price change(s); or (b) the previous year's prices plus the applicable rate cap percentage referenced in Table E below.



- D. The rate cap percentage, in **Tables D** and **E** above, will be determined by the price tier attained by the Customer for each respective product at the conclusion of the last Contract Quarter prior to the anniversary date.
- E. Contract Package pricing for Customer's First-Class Package Service Contract Packages weighing up to will be prevailing published Rates for First-Class Package Service Commercial throughout the term of the Contract.
- F. Customized Rates for the subsequent years will be calculated by the Postal Service and rounded up to the nearest whole cent. If the Postal Service maintains or decreases published Rates of applicability for Priority Mail Commercial Plus, First-Class Package Service Commercial, Parcel Select pound-rated and Parcel Select Lightweight, there shall be no change to Contract Package pricing for that Contract Year for the respective product.

6.13 Surcharges, Additional Fees and Time-Limited Price Changes.

1. Customer will be subject to a Time-Limited Price Change during the period November 20th through December 26th in each Contract Year, pursuant to Table F below. During such period, Contract Prices will be increased by the lesser of: a) the change in published prices during the Time-Limited Price Change, or b) the prices in Table F below. The Time-Limited Price Change (defined below) shall not be considered the "most recent price change" for the purposes of the Annual Adjustment provision in Section 6.12 (Annual Adjustment).



6.14 Nonstandard Length, Nonstandard Volume and Dimension Noncompliance Fees.

a. On the Contract's Effective Date, for Customer's Priority Mail packages to be exempt from the applicable Nonstandard Fees, the percentage of Priority Mail packages exceeding the Nonstandard Lengths and Nonstandard Volume, must not exceed the percentage of total Priority Mail packages in each Contract Year pursuant to Table G below.



- b. Should Customer exceed the Nonstandard Volume Threshold in any category pursuant to Table G above, the postage due shall be payable by Customer to Postal Service as a lump sum payment thirty (30) calendar days following written notification by the Postal Service.
- c. Customer will pay the prevailing published Dimension Noncompliance Fee for all packages under this Contract not in compliance with the applicable requirement.
- d. Priority Mail packages originating from and/or addressed to the ZIP Codes in Table A will not be eligible for the customized Nonstandard Fees, and will be charged the prevailing published Nonstandard Length, Nonstandard Volume and Dimension Noncompliance Fees.
- e. First-Class Package Service, Parcel Select pound-rated and Parcel Select Lightweight packages tendered to the Postal Service under this contract are not eligible for customized Nonstandard Fees and will pay prevailing published.
- f. If during the term of the Contract, the discounted Non-Standard Fees exceed Published Prices, the Customer shall pay the prevailing Published Fee.

- 6.15
- 6.16 Appeals. Customer may appeal a Postal Service decision regarding the calculation of Rates, the amount of postage paid, or other implementation or operational issues under this Contract by submitting a written appeal via email, along with any and all supporting documentation, within thirty (30) Calendar Days of receipt of notification of the determination giving rise to the appeal to:

 The appeal is forwarded to the Pricing and Classification Service Center (PCSC). The PCSC manager issues the final agency decision. Any decision that is not appealed as prescribed becomes the final agency decision.
- 6.17 Costs of Operation. Postal Service (as defined to include Subcontractors) shall bear all of its own expenses incurred in connection with or incidental to performing Services, including but not limited to the cost of (i) labor, permits, licenses and other certifications, insurance premiums, data processing and data storage, and other overhead, and (ii) storage of Packages, and (iii) vehicle purchase or rental; and (iv) maintenance and upkeep of equipment including trailers and other parts; and (v) fuel, oil, and other supplies necessary for ongoing operations.
- 6.18 Memorandum of Understanding. The Parties will endeavor to mutually agree to operational procedures as it pertains to Priority Mail, First-Class Package Service and Parcel Select packages. Such procedures are intended to be documented in an agreement between the Parties and updated as necessitated by operational changes or requirements ("Operations MOU").

7 Payment

7.1 **Payment.** Customer shall pay, as full compensation for the Services provided by Postal Service, the Rates agreed to by the Parties in <u>Section 6.11</u> (Price Calculation) above. Rates are to be paid at the time of shipment via ACH, debit, PC Postage or EPS.

7.2 Accurate Books and Records.

- G. Postal Service agrees at all times to maintain accurate and complete books, records and accounts evidencing all payments of any kind from Customer, in connection with the performance of this Contract, and to maintain such books, records and accounts for at least four (4) years after the completion of the Services in question. Postal Service further agrees that upon reasonable request by Customer, Postal Service will provide copies of requested records of shipping transactions on behalf of Shipper or otherwise relating to the Services.
- H. Customer shall respond to reasonable requests of the Postal Service's or its designated auditor's yearly transaction confirmations related to Postal Service transactions; and such other reasonable assistance as requested by the Postal Service or its designated auditors in connection with Customer's performance under this Contract.

8 Delivery

8.1 **Undeliverable Packages.** Under the Domestic Mail Manual ("DMM"), after one attempt to make a delivery, Postal Service shall notify the Consignee who may make alternative delivery arrangements online or by returning Postal Services' PS Form 3849 for redelivery to the same address or for pick-up at their local Post Office. After fifteen (15) days, Postal Service will return a Package to Shipper if it is unable to deliver such Package or alternative delivery instructions have not been provided.

8.2 On Time Delivery Target Performance Language.

- 1. The Parties agree that there is a mutual goal of attaining the targeted performance level of for on time delivery. The service level represents the on-time delivery expectation by the Postal Service for all Services set forward under the Contract. Postal Service will provide data to support its assessment of on-time performance. The Parties further agree that timely performance shall be a Key Performance Indicator within this Contract that will be evaluated during quarterly business reviews.
- 2. The minimum acceptable goal is for Controllable On Time Performance to exceed for each Point of Origin and service level. "Controllable on time performance" is defined as total Packages delivered divided by the total number of Packages shipped.
- 3. Should Postal Service fail (i) to achieve this minimum goal during any time within two (2) consecutive months, or (ii) to timely address any significant service disruptions (defined as immediate service breakdowns impacting greater than of the Point of Origins), then upon request the Parties shall work together to create a mutually agreeable service improvement plan with respect to any or all Places of Origin.

9 Product Loss or Damage: Injury to Persons and Property

- 9.1 Standard of Liability. Postal Service shall take all necessary and reasonable steps to minimize and avoid loss of or damage to Products. Postal Service shall be liable for all loss of or damage to Products and Packages occurring while in the Custody of Postal Service or any Subcontractor, or resulting from Postal Service's or any Subcontractor's performance or failure to perform the Services as described, except as provided in Sections 9.3 and 23.4 (Exceptions to Liability). For purposes of determining liability, any loss of or damage to Products sustained while the Products and/or Packages are in the Custody of Postal Service or a Subcontractor (as defined) will be treated as if it occurred while the Products and Packages were in the actual possession of Postal Service, or its Subcontractors. In particular Postal Service shall be liable for claims whether the loss occurred while Products and Packages were in the actual custody of Postal Service or its Subcontractors, or in Postal Service's or its Subcontractors' constructive custody, as in the custody of third party subcontractors, including but not limited to receiving carriers, delivering carriers, the carrier issuing the bill of lading, the owner of equipment transporting the Products and Packages, the carrier, warehouseman, or other bailee in possession at the time when the damage, loss, or delay occurred. Except as provided in Sections 9.3 (Exceptions to Liability), if Postal Service is unable to substantiate the cause of the loss or damage, Postal Service shall be liable to Customer in accordance with this Section 9.
- 9.2 **Notice of Occurrence/Mitigation.** Postal Service shall give notice in writing to Customer and to the Shipper designated on the Receipt within one (1) Business Day of any incident, occurrence, or condition which caused loss or damage to Products. Postal Service shall take all reasonable and necessary measures to protect the Products from further loss or damage. After notification, Postal Service shall make arrangements with Customer or with the Shipper or Consignee for preservation of the Products and (if alternative delivery instructions are

- necessary) for delivery of the Products. Postal Service shall be liable to Customer for all loss or damage to its Products as to which Postal Service fails to timely notify Customer.
- 9.3 **Exceptions to Liability.** Postal Service shall not be liable for loss or damage to Products to the extent that such loss or damage is proximately caused by:
 - a. severe storm, hurricane, tornado, flood, lightning, or other similar act of God; or
 - b. war or other acts of public authorities or of the public enemy; or
 - c. insufficient packaging, packing, loading or bracing, if such functions were performed by the Shipper; or
 - d. inherent vice of the Product.

Nothing in this Section 9.3 is intended to relieve Postal Service of liability to the extent that:

- i. the loss or damage might have been prevented or avoided by due care on the part of Postal Service or its Subcontractors; or
- ii. an act or omission of Postal Service or its Subcontractors contributed to the initial loss or damage; or
- iii. loss or damage resulted from Postal Service's failure to preserve or otherwise care for Products following an occurrence or condition described in Section 9.3 (a)(b)(c) or (d).
- 9.4 **Prima Facie Case.** Evidence that a Package was received by Postal Service at the Point of Origin in good condition (as documented by the Receipt) and delivered in damaged condition (or that some portion of the shipment is missing at the time of delivery) shall establish a *prima facie* case of Product loss or damage for purposes of Section 9.1 (Standard of Liability), and Postal Service shall have the burden of proving it is <u>not</u> liable for such loss or damage under Section 9.3 (Exceptions to Liability) and that Postal Service, or its Subcontractors were otherwise free from negligence. The Consignee's failure to note loss or damage upon delivery at the Point of Destination shall not be deemed a waiver of the right of the party in interest to assert such a claim; both Parties acknowledge that loss or damage may be noted on a Concealed Damage Report.
- 9.5 **Concealed Loss or Damage.** Concealed Damage Reports shall be deemed timely if sent to Postal Service not more than fifteen (15) Calendar Days after the Actual Arrival Date. If more than fifteen (15) Calendar Days pass following the Actual Arrival Date, before submission of the Concealed Damage Report to Postal Service, then the burden shall shift to the claimant to prove by reasonable evidence that loss or damage occurred while the Products were in the Custody of Postal Service (rather than following delivery).
- 9.6 **Personal Injury and Property Damage.** Postal Service shall be liable to Customer for any damage to Customer's tangible property (other than the Products and Packages) caused by the negligent or willful acts or omissions of Postal Service or its Subcontractors. Postal Service shall be liable for actions and claims for bodily injury (including injury resulting in death) and damage to property arising out of or in connection with Customer's entrusting Products and/or Packages to the Custody of Postal Service under this Contract or otherwise in connection with the negligence or willful acts or omissions of Postal Service or its Subcontractors. Where such third parties name Customer, directors, officers, employees and agents, the indemnification provisions set forth in Section 19 (Indemnification) shall apply.
- 9.7 **Damage by or to Equipment.** Customer shall not be liable to Postal Service for any loss or

damage sustained by or to equipment used by Postal Service to provide Services under this Contract, including but not limited to fire, theft, collision or otherwise, or for loss by confiscation or seizure of such equipment.

10 Valuation

- 10.1 Calculation of Product Damage. If Postal Service is liable to Customer for loss of or damage to Products in its Custody, as determined under <u>Section 9.1</u> (Standard of Liability), Postal Service shall pay Customer:
 - (A) in the case of loss or damage: the value of those Products as calculated under <u>Section</u> 10.2 (Value of Products) below; and
 - (B) delay damages, if any, as calculated under <u>Section N/A</u> and other economic damages, as described herein.
- 10.2 Value of Products. For purposes of <u>Section 10.1</u> (Calculation of Product Damage), the value of Products is as follows:



10.3 Waiver. Postal Service hereby expressly waives any and all rights it may have to limit the amount of its liability under any Regulatory Requirements, rule or tariff, including but not limited to any applicable provisions of Postal Service's service guide, by virtue of which such liability was or could have been determined. To the extent necessary by law, however, the Parties acknowledge that the Valuation set forth in Section 10.2 (Value of Product) with respect to liability is reasonable under the circumstances surrounding the Services hereunder.



12 Submission of Claims

- 12.1 **Claim Forms.** Claims for loss or damage to Products must be submitted to Postal Service in writing to the address set forth in *Publication 122, Domestic Claims, Customer Reference Guide,* or such other address as Postal Service may from time to time specify.
- 12.2 **Acknowledgement of/Disallowance of Claims.** No later than seven (7) Business Days following its receipt of a Claim Form, Postal Service shall provide Customer with a written acknowledgement of the claim. Postal Service shall be deemed to have waived the right to contest a claim if it has not, within thirty Calendar Days after its receipt of a Claim Form, either (i) submitted for processing payment of the claim in the full amount set forth in the Claim Form; or (ii) notified Customer in writing that it is denying the claim, or that it is paying only part of the amount claimed, with a detailed explanation for the denial.

13 Compliance with Law/Authority

- 13.1 **Postal Service's Responsibility.** Postal Service shall at all times comply with all applicable Regulatory Requirements in connection with performing the Services and agrees to provide Customer with suitable evidence of such compliance, upon Customer's request.
- 13.2 Customer's Responsibility. Customer shall at all times comply with all applicable Regulatory Requirements in connection with its obligations under this Agreement and agrees to provide the Postal Service with suitable evidence of such compliance, upon the Postal Service's request.

14 Ownership of Products

As between Customer and Postal Service, the Products shall be the exclusive property of Customer, and Postal Service shall assert no interest therein. Postal Service shall not assert or take any action to claim or perfect a lien on any Package or any portion thereof and shall use its best efforts to prevent any of its Subcontractors from doing so. In the event one or more of Postal Service's Subcontractors attempt to assert or take action to claim or perfect a lien on any Package or any portion thereof, Postal Service shall be strictly liable to Customer for any and all consequences, including economic and delay damages. Accordingly, Postal Service hereby waives any lien rights it may have pursuant to applicable Regulatory Requirements.

15 Insurance.

The Postal Service is self-insured under its organic statute. As such, the Postal Service does not maintain commercial insurance. Any payment of claims or damages is to be made directly by the Postal Service.

16 Confidentiality

- 16.1 Non-disclosure. The Mutual Non-Disclosure Agreement dated May 14, 2021 ("NDA"), by and between the Parties, is made a part of this Contract. The obligations of protection of Confidential Information, is subject to that NDA.
- 16.2 No Publicity. Except as expressly permitted under a separate arrangement, neither Party shall use the other Party's name, trade name, logo, trademark, or service mark, whether registered or not, or the name, assumed business name, trade name, logo, trademark, or service mark, whether registered or not, of any Affiliate of such Party, or any content in which such Party or any Affiliate of such Party holds a copyright, in connection with publicity, advertisements, promotion or in any other connection. Neither Party shall disclose to any

third party the existence of this Contract or the monetary value of this Contract unless so required by a court or government agency of competent jurisdiction. In addition, Postal Service shall not identify Customer or in any manner on Postal Service's customer list or its website (or on any third party website identifying Postal Service) or include Customer's or any name in the metatags of any website.

16.3 **Remedies.** Postal Service acknowledges that Customer would be irreparably harmed and would have no adequate remedy at law in the event of breach of this <u>Section 16</u> (Confidentiality) or <u>Section 17.5</u> (Data Security). Accordingly, Customer, in addition to seeking and recovering money damages and other remedies available at law to compensate for a breach, shall be entitled to seek and obtain, without the requirement of posting a bond, an injunction or other equitable relief to prevent an actual or threatened breach or to discontinue an ongoing breach. Postal Service shall reimburse Customer for reasonable costs and expenses, including attorneys' fees at trial and on appeal, incurred by Customer in enforcing the provisions of this <u>Section 16</u>.

17 Data

- 17.1 **Data Storage**. Postal Service shall, at its own expense and using its own equipment, store Customer Data on Postal Service's System for so long as this Contract remains in force, plus any period of time agreed to by the Parties for record retention as described in <u>Section 17.8</u> (Record Retention) of this Contract, including but not limited to:
 - Customer and Postal Service shall be responsible for and pay their respective EDI costs
 for all EDI transactions between them, including but not limited to communications
 charges, if any, incurred to a third party providing a value-added network. The tracking
 mechanism provided by the Postal Service is sufficient. Postal Service will not be
 responsible for any costs associated with that third-party service provider providing a
 value-added network.
- 17.2 **Software**. At no additional charge to Customer, and if requested by Customer, Postal Service will provide Customer with information technology support, including but not limited to:
 - Maintaining a tracking system which supports EDI transactions in compliance to Customer's EDI specifications.
- 17.3 **Reporting.** At no additional charge to Customer, Postal Service will provide the following information to Customer electronically:
 - Once per month: files containing Customer's claims data for the preceding month;
 - Weekly and monthly: reports on performance and activity;
 - At Customer's request: proofs of delivery reports and exception reports (Postal Service shall provide proof of delivery reports within 24 hours of Customer's request, and Exception Reports (OS&D) within 24 hours of first break.)
 - Any other reports reasonably requested by Customer.
- 17.4 **Ownership of Data.** Postal Service agrees that the Customer Data are the exclusive property of Customer or of the particular to which the data pertains. Customer Data is confidential within the meaning of this Contract and in particular, within the meaning of the NDA.
- 17.5 **Data Security.** Postal Service will not access, collect, use, retain or disclose ("Handle") the Customer Data for any purpose other than that of rendering Services under this Contract and shall not permit the Handling of such data by third parties for any purposes whatsoever,

- except by Subcontractors as may be necessary to render Services under this Contract. Postal Service shall protect the Customer Data using security measures in alignment with *USPS Handbook AS-805*, *Information Security*, which serves as an organization-wide standardized framework of information security policies.
- 17.6 **Data Back-Up.** Postal Service represents and warrants that (1) Customer Data shall be stored on computer equipment which is protected from power outages by power generators; and (2) Customer's files shall be backed up (copied) at regular intervals; and (3) such back-up data shall be stored at disaster recovery sites maintained by Subcontractors or maintained by Postal Service at a location other than the main computer facility. In the event that any Customer Data within the custody or control of Postal Service is erased, lost, corrupted or otherwise damaged, Postal Service shall, at Postal Service's sole expense, (a) make best efforts to recover such data.
- 17.7 **Return of Customer's Property.** Following termination of this Contract for any reason, but in no event to exceed twenty (20) Business Days after the date that Services are last performed, Postal Service shall return to Customer or to a third party designated by Customer, in machine readable form on a standard medium requested by Customer (whether on disk or on tape or otherwise) and in Postal Service's standard format, all Customer Data and records, including but not limited to the Customer Data (as it then exists, including all updates) and all Customer invoices then in Postal Service's custody. No charges shall be imposed upon Customer in connection with return of Customer Data or other records.
- 17.8 **Records Retention.** Postal Service acknowledges it has a fiduciary obligation to produce and retain accurate records with regard to Customer's business. Postal Service shall maintain complete and accurate records of all transactions. At all times during the Term of the Contract and for a period of three (3) years following termination of this Contract, regardless of the reason for termination, Postal Service shall retain copies of all Customer Data generated, gathered, or stored during and for the immediately preceding five-year period, to the extent required by applicable law and so long as all such data is adequately encrypted.
- 17.9 Assessment and Security Incident. If Postal Service becomes aware of, or reasonably believes that there has been, any unauthorized or unlawful access, acquisition, use, alteration, disclosure, destruction or loss of Customer Data, or unauthorized access to Customer systems (each an "Incident"), Postal Service shall notify Customer without undue delay (or sooner if required by Regulatory Requirements), except to the extent prohibited by applicable law, via email with a read receipt to and a copy to Postal Service's primary business contact within Customer. Postal Service shall provide Customer with known information about the Incident, including causation and remediation efforts. Postal Service shall take immediate steps to contain and remedy any such Incident. Postal Service will cooperate with Customer to provide information necessary for any investigation or response in a timely manner, facilitate coordination with Subcontractors and others involved in the matter.

18 Integration/Modification.

- 18.1 **Entire Contract.** The terms contained in this Contract and the Exhibits and Schedules attached hereto, which are hereby incorporated into and form a part of this Contract, constitutes the entire agreement between the Parties with regard to the subject matter of this Contract. This Contract supersedes all prior and contemporaneous agreements, understandings, negotiations, and discussions, whether written or oral, between the Parties with regard to the subject matter hereof.
- 18.2 **Modification.** No amendment to or modification of this Contract shall be valid or binding

unless it is in a written instrument which (i) refers to this Contract, (ii) identifies the specific language to be amended; and (iii) and is duly executed by authorized representatives of both Parties. In the case of Customer, only the are authorized to bind Customer, by their original signatures, to any modification or amendment.

- 18.3 Inconsistent documents. In the event of any inconsistency between this Contract and the terms and conditions of the Receipt, this Contract shall control. Any notation on the Receipt or other shipping document which is inconsistent with this Contract, or which purports to amend this Contract or make it inapplicable to the Packages covered therein, shall be void and of no force or effect unless such notation is signed by the provided, however, that any such amendment shall apply only to the particular Package(s) described in or covered by that Receipt. An electronic signature on the bill of lading shall not be binding against Customer for purposes of this Section 18.
- 18.4 Effect of Waiver. The nonenforcement, or failure to insist on strict compliance with any of the terms, covenants or conditions hereof, shall not be deemed a waiver of any right granted under this Contract; nor shall any waiver of any right granted hereunder on one occasion be deemed a waiver at any other time.

19 Indemnification

Postal Service shall, at its own expense, defend Customer, and the directors. officers, employees, and agents of Customer and , (collectively "Indemnitees") against and from any and all claims, demands, and suits, arising out of or relating to this Contract; and Postal Service shall indemnify and hold harmless Indemnitees against losses, costs, damages, judgments, and expenses, including attorney's fees and litigation costs and expenses, before or at trial and on appeal, brought or made against or incurred by any of the Indemnitees, whether such claim or action alleges tort, breach of Postal Service, or violation of a statute (a) arising out of bodily injury or death of any principal, employee, driver, agent or Subcontractor of Postal Service or of any third party, or (b) actually or allegedly arising out of or in connection with acts or omissions of Carrier or any of Postal Service's principals, employees, drivers, agents or Subcontractors, or (c) actually or allegedly arising out of or in connection with the performance or breach of this Contract, or (d) alleging loss of or damage to any property of Customer or of a third party (other than Products and/or Packages, loss of or damage to which shall be treated under Sections 9 (Product Loss or Damage; Injury to Persons and Property) and Section 10 (Valuation); or (e) based on an allegation that Customer is the employer of any of Postal Service's principals, employees, drivers, agents or Subcontractors for purposes of compensation, working conditions or environment, taxation or workers' compensation or other employee benefits or for any other purposes. Without limiting the generality of the foregoing, Postal Service's defense and indemnity obligations shall extend to any claims arising out of (i) the transmission of Customer Data to a third party in violation of Section 16 (Confidentiality) or Section 17 (Data); or (ii) Carrier's failure to fully comply with all applicable Regulatory Requirements or any other breach of Section 17 (Data); or (iii) Postal Service's assignment to any third party of this Contract or of its right to receive payments under this Contract.

20 Personnel

20.1 Independent Contractor Status; No Employment Relationship. Customer and Postal Service are contractors independent of the other. None of the provisions contained in this Contract shall be interpreted or construed as evidence of the Parties' intent to create or establish an employee/employer relationship between Customer and Postal Service, or any of

Postal Service's Subcontractors. Postal Service shall, in its sole discretion, determine arrangement of Services, including but not limited to supervising its employees' methods of working and otherwise controlling their working conditions, and furnishing their tools and equipment required to perform the Services. Postal Service shall be solely responsible for the direction and control of all its employees in the performance of Postal Service's obligations hereunder. Postal Service shall be solely responsible for the selection, hiring, firing, supervision, assignment, and direction of its employees, as well as the setting of wages, hours and working conditions, and the adjustment of their grievances. Postal Service shall, at its own expense assume full responsibility to (a) pay all salary, wages, and other compensation due to its employees; (b) withhold and pay all applicable federal, state, and local taxes, FICA, Medicare, unemployment insurance, social security and other taxes from the wages or salaries of its employees; and (c) provide and pay for workers' compensation insurance for them in accordance with applicable law and in accordance with the requirements of Section 15 (Insurance), whichever amount is greater. Customer shall have no responsibility for payment of Postal Service's employees, drivers, agents or Subcontractors and shall in no way be obligated to pay any fines or penalties assessed against Postal Service or Subcontractors for noncompliance with any applicable Regulatory Requirements as more fully set forth in Section 13 (Compliance with Law/Authority) and Section 21.2 (Subcontractors).

20.2 **No Agency.** Neither Party (nor any principal, employee, Postal Service, agent, or representative of either Party) shall have the right, power, or authority to create any obligation or duty, express or implied, on behalf of the other Party, represent the other Party in an agency capacity, bind the other Party to any contract, make any representations on behalf of the other Party, or otherwise act on the other Party's behalf. Accordingly, Customer shall not be responsible for or liable to any third party for the acts, omissions, or liabilities of Postal Service or of its employees, Subcontractors, or other agents.

21 Assignment

- 21.1 No Assignment. Neither Party may assign or transfer this Contract, in whole or in part, without the prior written consent of the other Party. Notwithstanding the foregoing, Postal Service may conditionally assign the right to receive payments under this Contract if such assignment is required as collateral for a loan or other financing obtained in the ordinary course of its business; provided that any third party assignee shall have no rights against Customer directly; and further provided, that Postal Service may make an assignment to an Postal Service Affiliate without Customer's consent upon no less than sixty (60) Calendar Days prior written notice to Customer. In the event that Postal Service transfers to a third party all or substantially all of the assets and business of Postal Service, Postal Service will notify Customer and Customer shall have the right to terminate this Contract, in which case Postal Service shall waive any minimum volume commitments that might otherwise have applied. Subject to the terms of this Section 21, this Contract will be binding in all respects upon, and inure to the benefit of the permitted successors and assigns of both Parties. Postal Service guarantees the performance of its assignees and Subcontractors and shall indemnify and hold harmless Customer from and against all losses, costs, liabilities and expenses arising out of or relating to any breach or default by such assignees or Subcontractors of this Contract, as more fully described in Section 19 (Indemnification).
- 21.2 **Subcontractors.** In the event that Postal Service at any time subcontracts any portion of the Services: a) such subcontracts shall not be deemed to create a contractual relationship between such Subcontractor and Customer, and b) all such subcontracts shall contain: (i) language protecting Customer's confidential information and limiting use of Customer's name, logos and other proprietary marks, that is no less restrictive than which applies to Postal

Service under this Contract, (ii) an acknowledgment and agreement by the Subcontractor that, pursuant to Section 17 (Data), any Customer Data are the exclusive property of Customer or of the particular to which the data pertains, (iii) insurance requirements with minimum limits of liability no lower than those in this Contract or as required by law, whichever is greater, and (iv) a warranty from Subcontractor that it is duly authorized to perform Services subcontracted for in accordance with the applicable Regulatory Requirements as required by Section 13 (Compliance with Law/Authority). Postal Service shall remain responsible to Customer for the full, proper, lawful and safe performance of this Contract and for the acts or omissions of any Subcontractors and of all persons employed by them as though any such subcontracted service had been performed directly by Postal Service and accordingly, Customer reserves any rights of termination against such Subcontractors pursuant to Section 3.2 (Termination for Cause by Customer). Further, Postal Service is and at all times shall be solely responsible to pay such Subcontractors any and all charges due to them, including without limitation freight charges and any other applicable charges or benefits and; Postal Service shall defend and indemnify Customer from and against all claims made against Customer by or on account of such Subcontractors pursuant to Section 19 (Indemnification). Customer shall have the right to reasonably disapprove of any Subcontractors, by written notice to Postal Service, in which case Postal Service shall substitute a new Subcontractor within a reasonable period of time. In the event that Postal Service has (1) subcontracted any of its contractual obligations hereunder and (2) becomes insolvent or files for bankruptcy, Postal Service hereby assigns to Customer all claims against Subcontractors or carriers for all claims and causes of action for non-delivery, Product damage, delay and expenses to Customer for Customer's Packages.

22 Legal Actions

- 22.1 Limitations Period: Product Loss/Damage. Notwithstanding anything to the contrary in the applicable Receipt or Receipts, or in the Uniform Bill of Lading, or in any tariff or tariffs filed by Postal Service, or any applicable law or regulation, the Parties expressly agree that the time bar for Postal Service claims under the laws of the state of shall apply to any claim for loss of or damage to Products. For purposes of the foregoing, the cause of action shall be deemed to have accrued when Postal Service notifies Customer in writing pursuant to Section 23.1 (Notices) that Postal Service has disallowed the claim, or the parts thereof specified in the notice. For purposes of this Section 22.1, an offer of compromise shall not constitute a disallowance of any part of a claim unless Postal Service informs Customer in writing that such part of the claim is disallowed and the reasons for such disallowance, and communications from Postal Service's insurer shall not constitute a disallowance of any part of a claim unless Postal Service informs Customer in writing that such part of the claim is disallowed and the reasons for such disallowance.
- 22.2 **Choice of Law; Forum.** This Contract will be interpreted under, and any disputes arising out of this Contract will be governed by the Federal laws of the United States. To the extent that federal law is not applicable, this Contract will be interpreted under, and any disputes arising out of this Contract will be governed by, the laws of the its conflict of laws principles. Each Party irrevocably consents to the jurisdiction of the federal courts located in the interpreted under, and any disputes arising out of laws principles. Each Party irrevocably consents to the jurisdiction of the federal courts located in the interpreted under, and any other jurisdiction of the federal courts located in the interpreted under, and any disputes arising out of the jurisdiction with all actions arising out of or in connection with this Contract and waives any objections that such venue is an inconvenient forum. Neither Party will initiate any action against the other Party in any other jurisdiction, provided that a final judgment in any such action or proceeding will be conclusive and may be enforced in any other jurisdiction by suit on the judgment or in any other manner provided by law.

23 Miscellaneous

23.1 **Notices.** Any notices required or permitted to be given by this Contract, except for notices under Section 9 for Product Loss or Damage and Section 17.9 for a security incident, may be sent (i) by facsimile or e-mail transmission, to the number/address set forth below, with original sent by U.S. Mail, or (ii) by overnight mail or courier service to the addresses below. Notice shall be deemed to have been received by the other Party: (i) on the date indicated on the receipt, in the case of courier or overnight mail, or (ii) on the date indicated on the fax transmission receipt or E-mail.



- 23.2 Advice of Counsel. Each Party to this Contract has consulted with, or had the opportunity to consult with, its legal department or with the independent attorney of its choice with regard to the Contract, and signs it voluntarily.
- 23.3 **No Exclusivity.** Nothing in this Contract shall be interpreted as requiring Customer to obtain all of its requirements for the type of Services Postal Service makes available, or as barring Customer or from acquiring some or all of their needs for similar Services from third parties.
- 23.4 Exceptions to Limitations. The limitations of liability set forth in this Contract, shall not apply in the event of (i) misdelivery, deviation, or conversion; or (ii) gross negligence or willful misconduct on the part of Postal Service or its Subcontractors or other agents; or (iii) fundamental breach of this Contract, if the Regulatory Requirements that are otherwise applicable provide for greater or more expansive recovery or remedies.
- 23.5 Severability. In the event that any clause of this Contract is found by a court validly asserting jurisdiction to be invalid or otherwise unenforceable, that clause will be considered void to the extent it is contrary to the applicable law, but such a finding shall not affect the validity of any other clause of the Contract, and the rest of the Contract shall remain in full force and effect.
- 23.6 Rules of Construction. The Parties agree that this Contract is the product of negotiation and that neither Party will be deemed to be the drafter thereof. In this Contract: (i) headings are inserted for convenience only and shall not affect the meaning of the text; (ii) references to the singular include the plural and vice versa; (iii) reference to a section, clause or exhibit is a reference to such in this Contract unless otherwise stated; (iv) and if there is any conflict or inconsistency between the body of this Contract and the Exhibits or Schedules, the body of this Contract shall prevail.
- 23.7 Execution by Counterparts. This Contract may be executed by facsimile and in one or more counterparts, each of which shall be deemed an original and all of which shall constitute one

and the same Contract.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties hereto have caused this Contract to be duly executed as of the later date below:

UNITED STATES POSTAL SERVICE

Signed by: Su-A-

Printed Name: Shibani Gambhir

Title: Vice President Business Development

Date: Dec 27, 2022

Approved: KM



EXHIBIT A -

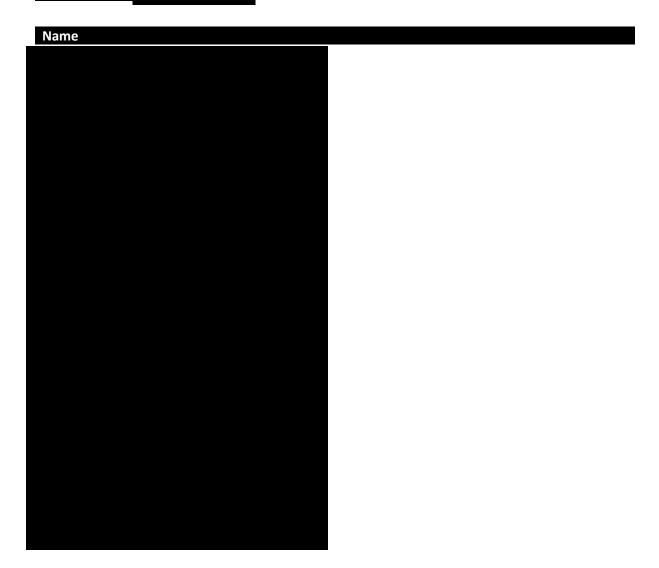


EXHIBIT B

A. Postal Service hereby identifies the following Postal Service Subcontractors:

EXHIBIT C - Sustainability Language

Customer's purpose is to

Customer believes business has a critical role to play in meeting the challenges of a changing world – addressing climate change, preserving the earth's constrained resources, enhancing global economic opportunity – not by reducing growth but by redefining it.

To support its ambitions, Customer sets 5 year targets and has specific goals for reduction of energy and waste. Transportation is a leading contributor to customer's carbon emissions targets. As such, Customer has a vested interest in ensuring its partners are industry leaders and rely on those partnerships, as shown here with the Postal Service, to achieve its sustainability targets.

The Customer and the Postal Service agree that each party will (i) demonstrate a strong commitment to social and environmental sustainability, (ii) comply with all applicable local and federal governmentally health and safety regulations, (iii) reduce the carbon and waste footprint for the transportation, distribution, and delivery of goods, and (iv) explore and provide where possible partnership opportunities for sustainable innovations. These commitments are key to developing an ongoing positive relationship between the Customer and the Postal Service.

Base requirements the Customer utilizes when contracting for carriers services are outlined in the Customer Supply Chain Sustainability Index in Figure 1.0 below. The Customer and Postal Service agree to work together to provide the information and resources needed to measure the carbon impacts of their mailings and to address the minimum requirements shown in Figure 1.



In particular, the Postal Service will:

- Accurately state what percentage of its overall North America (USA + Territories) network runs on alternative fuels, to be reported annually via the USPS Annual Sustainability Report (ASR).
- 2. Endeavor to identify, track, and report carbon emissions from servicing Customer-specific freight/mail, via the USPS BlueEarth Carbon Accounting Service and Reports.

- 3. Endeavor to support Customer's ability to track reductions in emissions and/or increases in efficiencies on a monthly basis using the USPS Carbon Accounting Service and Reports.
- 4. Carbon reduction will be measured on a cumulative mail class basis using package/shipment volumes. Customer will track mail class carbon data to determine where opportunities exist to reduce the carbon impact of their mailings.

Endeavor Engage and report out on ongoing carbon reduction projects which support Customer's carbon specific reduction targets for mail. Information will be provided in the USPS's Annual Sustainability Report.

MAIL CLASSIFICATION SCHEDULE

PART B—COMPETITIVE PRODUCTS

2000 COMPETITIVE PRODUCT LIST

NEGOTIATED SERVICE AGREEMENTS

Domestic

Priority Mail, First-Class Package Service & Parcel Select Contract 5

Statement of Supporting Justification

- I, Shibani S. Gambhir, Vice President, Business Development, am sponsoring this request that the Commission add Priority Mail, First-Class Package Service & Parcel Select Contract 5 to the list of competitive products. This statement supports the Postal Service's request by providing the information required by each applicable subsection of 39 C.F.R. § 3020.32. I attest to the accuracy of the information contained herein.
- (a) Demonstrate why the change is in accordance with the policies and applicable criteria of the Act.

As demonstrated below, the change complies with the applicable statutory provisions.

- (b) Explain why, as to the market dominant products, the change is not inconsistent with each requirement of 39 U.S.C.§ 3622(d), and that it advances the objectives of 39 U.S. C. § 3622(b), taking into account the factors of 39 U.S. C. § 3622(c). Not applicable. The Postal Service is proposing that this Priority Mail, First-Class Package Service & Parcel Select contract be added to the competitive products list.
- (c) Explain why, as to competitive products, the addition, deletion, or transfer will not result in the violation of any of the standards of 39 U.S.C. 3633.

The service to be provided under the contract will cover its attributable costs and make a positive contribution to coverage of institutional costs. The contract will increase contribution toward the requisite 5.5 percent of the Postal Service's total institutional costs. Accordingly, no issue of subsidization of competitive products by market dominant products arises (39 U.S.C. § 3633(a)(1)).

(d) Verify that the change does not classify as competitive a product over which the Postal Service exercises sufficient market power that it can without risk of losing a significant level of business to other firms offering similar products: (1) set the price of such product substantially above costs, (2) raise prices significantly; (3) decrease quality; or (4) decrease output.

The contract sets specific terms and conditions for providing Priority Mail, First-Class Package Service & Parcel Select to the customer. Priority Mail, First-Class Package Service & Parcel Select are provided in a highly competitive market. The Postal Service is unable to set prices substantially above costs, raise prices significantly, decrease quality, or decrease output, without losing this business to private competitors in the expedited shipping market.

In negotiating this contract, the Postal Service's bargaining position was constrained by the existence of other providers of services similar to the Postal Service's. As such, the market precludes the Postal Service from taking unilateral action to increase prices or decrease service. As with Priority Mail, First-Class Package Service & Parcel Select in general, the Postal Service may not decrease quality or output without risking the loss of business to competitors that offer similar expedited delivery services. The market does not allow the Postal Service to raise prices or offer prices substantially above costs; rather, the contract is premised on prices and terms that provide sufficient incentive for the customer to ship with the Postal Service rather than a competitor.

(e) Explain whether or not each product that is the subject of the request is covered by the postal monopoly as reserved to the Postal Service under 189 U.S.C. 1696, subject to the exceptions set forth in 39 U.S.C. 601.

I am advised that merchandise sent by Priority Mail, First-Class Package Service & Parcel Select and this contract are not covered by these provisions. See part (d) above.

(f) Provide a description of the availability and nature of enterprises in the private sector engaged in the delivery of the product.

See part (d) above. Expedited shipping, similar to Priority Mail, First-Class

Package Service & Parcel Select, is widely available from well-known and successful private firms at both published and contract prices.

(g) Provide any available information of the views of those who use the product on the appropriateness of the proposed modification.

Having entered into this contract with the Postal Service, the customer supports the addition of the contract to the product list so that the contractual terms can be effectuated.

(h) Provide a description of the likely impact of the proposed modification on small business concerns.

The market for expedited delivery services is highly competitive and requires a substantial infrastructure to support a national network. Large shipping companies serve this market. The Postal Service is unaware of any small business concerns that could offer comparable service for this customer.

(i) Include such other information, data, and such statements of reasons and bases, as are necessary and appropriate to fully inform the Commission of the nature, scope, significance, and impact of the proposed modification.

Additional details regarding the terms of the contract have been provided to the Commission under seal due to the sensitivity of the contract to both the customer and the Postal Service.

Certification of Prices for

Priority Mail, First-Class Package Service & Parcel Select Contract 5

I, Jorge A. Diaz, Manager, NSA Strategy & Support, Finance Department, am familiar with the prices and terms for Priority Mail, First-Class Package Service & Parcel Select Contract 5. The prices and terms contained in this Contract were established by the Decision of the Governors of the United States Postal Service on the Establishment of Prices and Classifications for Domestic Competitive Agreements, Outbound International Competitive Agreements, Inbound International Competitive Agreements, and Other Non-Published Competitive Rates (Governors' Decision No. 19-1).

I hereby certify, based on the financial analysis provided herewith, that the prices are in compliance with 39 U.S.C § 3633 (a)(1), (2), and (3). They are expected to cover attributable costs. There should therefore be no subsidization of competitive products by market dominant products. This contract should not impair the ability of competitive products on the whole to cover an appropriate share of institutional costs.

Jorge A Diaz Digitally signed by Jorge A Diaz Date: 2022.12.28 11:08:23

Jorge A. Diaz

APPLICATION OF THE UNITED STATES POSTAL SERVICE FOR NON-PUBLIC TREATMENT OF MATERIALS

In accordance with 39 C.F.R. Part 3007, the Postal Service hereby applies for non-public treatment of: the unredacted Governors' Decision; the unredacted shipping services contract; and the supporting documents establishing compliance with 39 U.S.C. § 3633 and 39 C.F.R. § 3015.5. The Postal Service hereby furnishes the justification required for this application by each subsection of 39 C.F.R. § 3007.201(b), as enumerated below.

For the reasons discussed, the Postal Service asks that the Commission grant its application for non-public treatment of the identified materials.

(1) The rationale for claiming that the materials are non-public, including the specific statutory provision(s) supporting the claim, and an explanation justifying application of the provision(s) to the materials.

The materials designated as non-public consist of information of a commercial nature, which under good business practice would not be publicly disclosed. In the Postal Service's opinion, this information would be exempt from mandatory disclosure pursuant to 39 U.S.C. § 410(c)(2) and 5 U.S.C. § 552(b)(3), (b)(4). Because the portions of the materials which the Postal Service is applying to file only under seal fall within the scope of information not required to be publicly disclosed, the Postal Service asks the Commission to support its determination that these materials are exempt from public disclosure and grant its application for their non-public treatment.

Information of a commercial nature, which under good business practice would not be publicly disclosed, as well as third party business information, are not required to

¹ In appropriate circumstances, the Commission may determine the appropriate level of confidentiality to be afforded to such information after weighing the nature and extent of the likely commercial injury to the Postal Service against the public interest in maintaining the financial transparency of a government establishment competing in commercial markets. 39 U.S.C.§ 504(g)(3)(A). The Commission has indicated that "likely commercial injury" should be construed broadly to encompass other types of injury, such as harms to privacy, deliberative process, or law enforcement interests. PRC Order No. 194, Second Notice of Proposed Rulemaking to Establish a Procedure for According Appropriate Confidentiality, Docket No. RM2008-1, Mar. 20, 2009, at 11.

be disclosed to the public. 39 U.S.C. § 410(c)(2); 5 U.S.C. § 552(b)(4). The Commission may determine the appropriate level of confidentiality to be afforded to such information after weighing the nature and extent of the likely commercial injury to the Postal Service against the public interest in maintaining the financial transparency of a government establishment competing in commercial markets. 39 U.S.C. § 504(g)(3)(A).² Because the portions of materials filed non-publicly in this docket fall within the scope of information not required to be publicly disclosed, the Postal Service asks the Commission to support its determination that these materials are exempt from public disclosure and grant its application for their non-public treatment.

(2) A statement of whether the submitter, any person other than the submitter, or both have a proprietary interest in the information contained within the non-public materials, and the identification(s) specified in paragraphs (b)(2)(i) through (iii) of this section (whichever is applicable). For purposes of this paragraph, identification means the name, phone number, and email address of an individual.

The Postal Service believes that the customer with whom the contract is made has a proprietary interest in the non-public materials and that customer-identifying information is sensitive and should be withheld from public disclosure. Therefore, rather than identifying the customer, the Postal Service gives notice that it has already informed the customer, in compliance with 39 C.F.R. § 3007.200(b), of the nature and scope of this filing and its ability to address its confidentiality concerns directly with the Commission. The Postal Service employee responsible for providing notice to the third party with proprietary interest in the materials filed in this docket is Elizabeth A. Reed, Attorney, 475 L'Enfant Plaza SW, Washington, D.C. 20260-1137, whose email address is Elizabeth.A.Reed@usps.gov and whose telephone number is 202-268-3179.

(3) A description of the information contained within the materials claimed to be non-public in a manner that, without revealing the information at issue,

² The Commission has indicated that "likely commercial injury" should be construed broadly to encompass other types of injury, such as harms to privacy, deliberative process, or law enforcement interests. PRC Order No. 194, Second Notice of Proposed Rulemaking to Establish a Procedure for According Appropriate Confidentiality, Docket No. RM2008-1, Mar. 20, 2009, at 11.

would allow the Commission to thoroughly evaluate the basis for the claim that the information contained within the materials are non-public.

The Governors' Decision establishing Domestic Competitive contracts, including those for Priority Mail, First-Class Package Service & Parcel Select, the contract identifying the customer and containing the prices, terms, and conditions of the contract, and the financial workpapers supporting the contract are being filed under seal in this docket. Redacted copies of the Governors' Decision and the contract are being filed publicly in this docket. The Postal Service maintains that the redacted portions of the Governors' Decision, the contract, name of the customer and related financial information should remain confidential.

With regard to the contract, the redactions are of the name, address, signature block, and other information that could identify the customer; such identifying information of a postal patron may be withheld from mandatory public disclosure by virtue of 39 U.S.C. § 504(g)(1) and 39 U.S.C. § 410(c). Also redacted are the negotiated price structure and the terms directly related to implementation of the price structure.

The redacted portions of the Governors' Decision and attached Analysis protect the costs authorizing Domestic Competitive contracts, and the analysis of those costs.

The redactions applied to the financial work papers protect commercially sensitive information such as underlying costs and assumptions, pricing formulas, information relevant to the mailing profile of the customer, and cost coverage projections. To the extent practicable, the Postal Service has limited its redactions in the workpapers to the actual information it determined to be exempt from disclosure under 5 U.S.C. § 552(b). However, in a limited number of cases, narrative passages or notes were redacted in their entirety due to the practical difficulties of redacting particular words or numbers within the text as presented in a spreadsheet format.

(4) Particular identification of the nature and extent of the harm alleged and the likelihood of each harm alleged to result from disclosure.

If the redacted information were to be disclosed publicly, the Postal Service considers that it is quite likely that it and the customer would suffer commercial harm.

The information is commercially sensitive, and the Postal Service does not believe that it would be disclosed under good business practices.

Revealing this information would provide a competitive advantage to competitors of the Postal Service and of the customer. The Postal Service considers that it is highly probable that if this information were made public, such entities would take immediate advantage of it and there is a substantial risk that the Postal Service and the customer would lose business as a result. Additionally, other postal customers could use the information to their advantage in negotiating the terms of their own agreements with the Postal Service and other businesses could use the information to their advantage in negotiating with the customer. The Postal Service considers these to be highly probable outcomes that would result from public disclosure of the redacted material.

Finally, the financial work papers include specific information such as costs, negotiated prices and pricing structure, assumptions used in developing costs and prices, mailer profile information, and projections of variables. All of this information is highly confidential in the business world. If this information were made public, the Postal Service's and the customer's competitors would likely take great advantage of this information. Unlike its competitors, the Postal Service is required to meet the standards of 39 U.S.C. § 3633 with each negotiated service agreement that it asks to have added to the competitive products list. Competitors are not so constrained and could use the redacted information to their advantage in gaining customers. The formulas shown in the spreadsheets in their native format provide additional sensitive information. Revealing the Postal Service's profit margin information could also be used by the customer to attempt to renegotiate its own prices.

(5) At least one specific hypothetical, illustrative example of each alleged harm.

Identified harm: Revealing customer identifying information would enable competitors to target the customers for sales and marketing purposes.

Hypothetical: The identity of the customer in this contract is revealed to the public. A competitor's sales representatives contact the Postal Service's customer and

offer the customer lower prices or other incentives, taking away the business anticipated by the Postal Service.

Identified harm: Public disclosure of negotiated terms of the agreement could be used by competitors and potential customers to the detriment of the Postal Service and its customer.

Hypothetical: A competitor obtains a copy of the unredacted version of Customer A's contract and workpapers to the detriment of the Postal Service's customer. Company B discovers proprietary business strategies and changes its business practices to minimize differentiation, identify their key customer base and cause defection of Customer A's customers. Customer A cancels the contract and withdraws their business from the Postal Service. Other companies would then refuse to share critical details of their business or to participate in negotiated prices with the Postal Service, harming the Postal Service's ability to compete in the marketplace for additional volume and revenue.

Hypothetical: The competitor could leverage multiple services to offer deeper discounts than provided by the Postal Service's contract as a loss leader, using profits on other products profits to make up for the temporary loss.

Identified harm: Public disclosure of the price formula, underlying cost structure, and information in the financial work papers relating to the contract would be used by competitors and customers to the detriment of the Postal Service.

Hypothetical: A competing package delivery service or its representative obtains a copy of the unredacted version of the financial work papers. It analyzes the work papers to determine what the Postal Service would have to charge its customers in order to meet its minimum statutory obligations for cost coverage and contribution to institutional costs. It then sets its own rates for products similar to what the Postal Service offers its customers under that threshold and markets its ability to guarantee to beat the Postal Service on price for similar delivery services.

Hypothetical: Competitors constantly monitor "cost to serve" scenarios to combine and alter facilities to lower costs. A competitor could add satellite pickup stations closer to the Postal Service's customer in order to underbid the Postal Service's prices.

Identified harm: Public disclosure of the prices and related terms would provide potential customers extraordinary negotiating power.

Hypothetical: Customer B obtains the contract showing Customer A's negotiated prices and the underlying workpapers. Customer B can determine that there is additional profit margin between the prices provided to Customer A and the statutory cost coverage that the Postal Service must produce in order for the agreement to be added to the competitive products list. Although Customer B was offered prices identical to Customer A's, Customer B uses the publicly available information to insist that it unless the Postal Service offers it even lower prices than Customer A's, it will not use the Postal Service but will give its business to a competitor of the Postal Service.

Alternatively, Customer B attempts to negotiate lower rates only for those destinations for which it believes the Postal Service is the low-cost provider among all service providers. The Postal Service may agree to this demand in order to keep the customer's business overall, which it believes will still satisfy total cost coverage for the agreement. Then, Customer B uses other providers for destinations other than those for which it negotiated lower rates. This impacts the Postal Service's overall projected cost coverage for the agreement. Although the Postal Service can terminate the contract when it sees that the mailer's practice and projected profile are at variance, the costs associated with establishing the contract, including filing it with the Postal Regulatory Commission, would be sunk costs that would have a negative impact on postal finances.

Harm: Public disclosure of information in the financial work papers would be used by the customer's competitors to its detriment.

Hypothetical: A business in competition with the customer obtains a copy of the unredacted version of the financial work papers. The customer's competitor analyzes the work papers to assess the customer's underlying shipping costs. The customer's competitor uses that information as a baseline to negotiate with shipping companies and other suppliers to develop lower-cost alternatives and thereby to undercut the customer.

(6) The extent of the protection from public disclosure alleged to be necessary.

The Postal Service maintains that the redacted portions of the materials filed non-publicly should be withheld from persons involved in competitive decision-making in the market for domestic parcel shipping products, as well as their consultants and attorneys. Additionally, the Postal Service believes that actual or potential customers of the Postal Service for such products should not be provided access to the non-public materials.

(7) The length of time for which non-public treatment is alleged to be necessary with justification thereof.

The Commission's regulations provide that non-public materials shall lose non-public status ten years after the date of filing with the Commission, unless otherwise provided by the Commission. 39 C.F.R. § 3007.401(a). However, because the Postal Service's relationships with customers often continue beyond ten years, the Postal Service intends to oppose requests for disclosure of these materials pursuant to 39 C.F.R. § 3007.401(b-c).

(8) Any other relevant factors or reasons to support the application.

None.